

S P E E C H

OF THE

HON. GEORGE E. BADGER,

OF NORTH CAROLINA,

IN THE UNITED STATES SENATE,

FEBRUARY 16, 1854,

ON THE

NEBRASKA BILL.

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SPEECH

OF

HON. GEORGE E. BADGER, OF N. C.

THE Senate, as in Committee of the Whole, resumed the consideration of the bill to organize the Territory of Nebraska, the pending question being on the amendment submitted on the 15th instant by Mr. CHASE, to add to the 14th section of the substitute reported from the Committee on Territories, as amended on the motion of Mr. DOUGLAS, the words:

"Under which the people of the Territory, through their appropriate representatives, may, if they see fit, prohibit the existence of slavery herein."

So that the part of the section relating to that matter would read:

"That the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the 8th section of the act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which, being inconsistent with the principles of non-intervention by Congress with slavery in the States and Territories, as recognised by the legislation of 1850, commonly called the 'compromise measures,' is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States, under which the people of the Territories, through their appropriate representatives, may, if they see fit, prohibit the existence of slavery therein."

Mr. BADGER. Mr. President, like my honorable friend from Massachusetts, [Mr. EVERETT,] I had a strong, and to my mind insuperable, objection to the substitute to the bill as it was originally reported to the Senate, upon the ground that I thought it did not effectually provide for maintaining the public faith of the nation towards the Indians, and their possessions, within the boundaries of these Territories. Like him, I felt, and feel, that every measure, not only of justice, but of kindness and consideration, should be extended to the remnants of those men who were originally powerful and warlike; who once possessed a large portion of the original States of the Union; but who now, dwindled in number, and enfeebled in power, have, under our authority, been gathered upon this territory west of the Mississippi, far from the original homes of their ancestors, under a guaranty that they should not be dispossessed of their new possessions.

I thought the substitute as originally reported did not, in effect, provide for requiring from these Indian tribes a free and voluntary consent, before territorial governments should be established over them. Not doubting at all that it was the intention of the honorable chairman who reported this bill, and of the committee at the head of which he is, to afford such guaranties for a free consent on the part of the Indians, and to assure to them the exercise of a real free will in determining upon the question, I still thought that, as the bill stood, there would be no guaranty to accomplish that purpose. I thought, and I still think, that, if we suppose these territorial governments established, and the governors of the Territories respectively made *ex-officio* the superintendents of Indian affairs, with all the appliances and means of those territorial governments brought to bear with, in fact, an over-powering force upon the exercise of the will of those tribes, it would be a mockery to ask them to consent, when the practical power of refusal was in substance withheld. Therefore, if the substitute had remained in its original condition, no earthly consideration would have induced me to give it my support; for I consider a fair and untainted reputation, as it is the most valuable possession of an individual in private life, the strongest safeguard of a nation.

But, sir, that substitute, upon the suggestion of the Committee on Indian Affairs, upon amendments proposed by its chairman, has been relieved of those obnoxious provisions, and I think it does now substantially assure to us the exercise of a free and independent will on the part of the Indian tribes. All control over them is entirely taken from the territorial authorities. Though included geographically within the bounds of these Territories, politically they are to all purposes out of them, and are not in any respect brought into contact with, and will not have any transactions, or business, or dealings, with the territorial authorities, as such. The full, entire, and complete jurisdiction of the President of the United States, and the officers of his appointment,

irrespective entirely of the territorial organization, is continued and reserved; and the acts passed for their security are re-enacted, and reaffirmed; and every reasonable precaution has been made to satisfy that plain demand upon our honor, that what is asked from them they shall be at liberty to refuse.

I know, sir, every gentleman is obliged to know, that every Indian tribe is more or less subjected to influences in the transaction of business respecting their condition, and their property, which is not in the power of the Congress of the United States entirely to dissipate and remove. It is possible that the President of the United States, acting under the authority conferred upon him by law, and reserved to him by this bill, may appoint agents who will be guilty of the most unworthy contrivances, means of compulsion, or arts of persuasion, which may result in really depriving the Indian of the fair and just exercise of his own independent will; but I am not to presume that any such use will be made of power. A President of the United States who would be guilty of such conduct would be justly handed down to posterity with indelible ignominy upon his character, and stand recorded to the remotest generations as a reproach to the character of the country which gave him birth and honored him with its confidence. As this, however, is not to be presumed, and is not to be believed, I say that I think all reasonable precautions have been taken which can be demanded of us to insure a fair, a just, and free exercise of the power of assent or dissent.

Again, Mr. President, I sympathized in the view expressed by my honorable friend from Massachusetts, [Mr. EVERETT,] that perhaps there was no necessity for immediate action in respect to the establishment of these territories, and that we might, without any serious detriment to the public good, have allowed the present state of things to continue for a few years longer; but then I agree with him that this is, at last, but a question of time. The very necessities of the case, the developments of the country, our acquisitions on the Pacific, the rush of the white population, with or without the approbation of Congress renders it but a question of time; and I am far from being certain but that it is better, this being, as I think, practically the undoubted state of things, that we should, by some timely and wise legislation, endeavor to do effectually now, what perhaps we may not be able to accomplish a few years hence—extend the restraining influence of our laws over this population—and that, on the whole, it is not at all unlikely that it is for the interests of the tribes themselves that we should now adopt the proposed legislation.

The public faith, then, Mr. President, being, as I think, sufficiently relieved from all just imputation, the question with regard to time being one of comparative unimportance, and, for

the reasons which I have mentioned, not weighing, at all events, strongly against the present adoption of some just system in reference to these Territories, the question then arises, is there anything in this bill which should induce me to reject it, or are its provisions such as commend it to our approbation? Every one must be aware that the real question, and substantially the whole question, involved in the consideration of the bill, arises upon the provision which has been incorporated into it, as amended upon the motion of the gentleman at the head of the Committee on Territories, respecting the power of legislation over the subject of slavery.

It is supposed, by gentlemen on both sides of the chamber, that the amendment made yesterday on the motion of the honorable senator from Illinois, gives an entirely objectionable character to the bill, and we are invoked to refuse to give it our sanction because it involves a violation of the plighted faith of the nation. It is said that this provision is a repeal of the Missouri compromise; that to repeal the Missouri compromise is to violate a common understanding by which the different portions of this country became bound to each other thirty years ago; and that, therefore, we cannot adopt that provision consistently with the principles of good faith. If that were so, I, for one, say, without hesitation, that nothing can be a compensation to us for the violation of the principles of good faith; but then we have to consider whether any such violation is involved in the bill. I propose to show that it is not, and that the language of the amendment, as incorporated into the bill, is true in fact, and that the consequence deduced from it in the particular provision is a just consequence; and that the declaration that the Missouri compromise is "inoperative and void" is the appropriate method and language which should be used for the purpose of producing the effect designed by this measure.

It becomes necessary, in order that I should do this, to recall the attention of the Senate somewhat to the nature and history of the Missouri compromise.

Sir, the nature of that compromise has been, I think, signally misunderstood. It is an act of legislation, to the language of which it is necessary to recur, in order to understand with clearness its intended operation and effect. It is the last section of the act passed on the 6th day of March, 1820, entitled "An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories." The act authorized the meeting of a convention in the month of June, after its passage, to consider the propriety of adopting a State constitution, and if the convention should deem

it proper to adopt a State constitution, and if that constitution were republican in its terms, according to the Constitution of the United States, the State of Missouri should be admitted upon an equal footing with the original States; and then, at the conclusion of the act, comes this section:

"SEC. 8. And be it further enacted, That in all that territory ceded by France to the United States under the name of Louisiana, which lies north of 36° 30' north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the parties shall have been duly convicted, shall be and is hereby forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his labor or service as aforesaid."

My honorable friend from Connecticut, [Mr. SMITH,] in the argument which he offered here, said that this prohibition was, upon the face of it, intended to apply to territorial organizations and not to States. Now, I say that it is plain that it was intended to apply to all organizations of government, States or Territories. In the first place the expression is "all that territory." What territory? Not a territorial political organization, not a portion or district of country in which a political government had been established under the authority of the United States; but obviously the word "territory" was used in the sense of land or domain, and it meant all that domain which the United States acquired by cession from France under the name of Louisiana. In regard to all that territory, or all that domain, what is the provision of this section? "That slavery and involuntary servitude shall be and is hereby forever prohibited," without reference to any mutations in the political condition of the domain, but it is to be "forever prohibited."

Again, aside from the absurdity of supposing that this strong and emphatic language, "forever prohibited" was intended to mean "until they become States," how, upon any system of interpretation, can you, consistently with the view offered by the senator from Connecticut, make the exception of "the State contemplated by this act"? If the enactment was to prohibit slavery in territorial political organizations, and not in States, how does it happen that, out of the territorial organizations we excepted the very State which the act provides should come into the Union?

But, sir, the history of the time shows us what this provision meant. It was a contest whether Missouri should not be compelled by her constitution to exclude slavery. The antagonism was between those who said that Missouri should be allowed to do as she pleased, and those who said Missouri should be controlled in regard to what she should do when she came into

the Union. The arrangement effected was to do what? Not to leave to Missouri a privilege which everybody admitted she had, but to leave to Missouri a right which she claimed, the existence of which right was denied, and to relieve her from the restriction or condition which it was proposed by the opponents of the extension of slavery to impose upon her admission into the Union.

But, sir, the meaning to be gathered from this provision is clear, (entirely independent of these two sources for ascertaining its sense,) if we recur to the corresponding provision introduced into the joint resolution for the annexation of Texas. That provision is in these words:

"New States of convenient size, not exceeding four in number, in addition to said State of Texas, having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such States as may be formed out of that portion of said territory lying south of 36° 30' north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery or involuntary servitude (except for crime) shall be prohibited."

That was a clear construction put by Congress, in the year 1845, upon the meaning and interpretation of the exclusion contained in the act for the admission of Missouri, passed in 1820. The last applies as a restriction to States, expressly by name as "States," and the other is a perpetual restriction upon certain described "territory" or domain, without the slightest reference to the political mutations through which it might pass.

In the next place, Mr. President, I think it is abundantly evident that the Missouri compromise was founded upon a certain principle. My friend from Massachusetts said that he did not see how he could with correctness use the language that the restriction in the eighth section of the Missouri bill was inconsistent with the principle of non-intervention established by the legislation of 1850. I think my friend erred. I understand by "principle" any fundamental truth, any original postulate, any first position from which others are deducted, either as principles or rules of conduct. For example, it is obvious that this principle, postulate, fundamental truth, original position, was assumed in 1820 in the passage of the Missouri compromise act, to wit: That Congress should have power to establish a geographical line, and to permit slavery on one side the line and excluding it on the other; and further, that it was expedient that such a line should be selected, and such an exclusion and permission attached to it; and therefore, out of these two positions followed the enactment contained in that statute,

that above 36° 30' slavery should be prohibited, with the implication that south of 36° 30' it might exist.

That is exactly the view which I have of what is meant in the amendment, which has now been incorporated into the bill by the expression "principle of non-intervention recognized by the legislation of 1850." Some original truth, some proposition admitted or assumed as being within the power of the legislature, and some position of expediency to use it, must always be supposed, as the reason or foundation upon which the authoritative rule of conduct is given in the law.

Well, then, what was the course to be taken? Here was an act which assumed to fix a line, and to prohibit slavery on one side and impliedly to admit it on the other side of the line. It applied to States as well as Territories; and it was so intended. It was supposed by the framers of that law that they had power to make it perpetual in its application to States as well as Territories. That is the first characteristic of it, or rather one characteristic divided into two heads. The next is this: The Missouri compromise law intended to fix it as a rule for all Territories of the United States. It is applied in terms to all that territory which was ceded by France; but we had no other territory. That was all the territory which we then had, whose destiny was to be settled by an act of Congress. Therefore, the further principle involved was this: They intended to compromise and adjust the question between the different portions of the Union then and forever.

Am I right in this? I think so. There is nothing in the act of Congress, there is nothing that I know of in the contemporary discussion in either of the houses of Congress upon the subject, which goes to show that the two houses considered that there was something particular in regard to the territory ceded by France; and that what would be right with regard to that would be wrong with regard to territory which might be ceded by another power. But then we have the Texan annexation commentary upon it. When Texas came into the Union, the Missouri compromise line was taken up and extended through her, as a matter of course; and, as "the Missouri compromise line," under that name, as a compromise line, just as applicable in principle to Texas as to the particular territory to which it had been originally applied. The first was an act of legislation. Of course, it could govern nothing except what we had. The second was an act of legislation. It took up and applied the rule, which was introduced into the first act, under its name of "the Missouri compromise line," and applied it to the new territory, as a matter of course.

To my understanding, it is clear that, when the Missouri compromise line was established, it was intended to apply to all the territory of

the United States. If we had had other territory acquired from Spain, or conquered from Mexico, or ceded by Mexico at that time, this line would of course have been extended to it. I think it is demonstrable, from the grounds of dictation and resistance on the one side, and the other from the terms in which this contest issued, from the reason of the ease, and from the subsequent legislation of Congress—for which no reason under heaven can be given, except that they were carrying out an established principle—that the principle of legislation embodied in the Missouri compromise was this: That a line in the territories should be selected, and slavery excluded on the one side, and impliedly allowed on the other; and that as we acquired future territory we should apply that line. One modification of this existing power, which has been one, I think, not of very long discovery, is this: That in truth and reality any exclusion of a power of a State either to admit or to exclude slavery, imposed by the government of the United States, must be vain, idle, and inoperative, as an act of power. It is obvious, as I have said, that the men of 1820 thought otherwise. Whether they intended or supposed that this restriction would operate *proprio vigore*, without further legislation, as an exercise of rightful power on the part of Congress, binding by its own proper efficacy; or whether they expected, as each new State within this domain in which slavery was prohibited should come into the Union, a "fundamental condition," as it is called, should be annexed to its admission; and whether they supposed that that fundamental condition would itself operate so as, in a proper sense, to restrict the power, or would merely impose an obligation of good faith upon the authorities of the State, we know not; but, to my understanding, it is plain that they intended the exclusion to apply to this domain under all political organization, and for all time, to be carried out in one or other of these manners.

Now, Mr. President, I propose to show that this principle, upon which the legislation of 1820 was based, was repudiated by the legislation of 1850. I propose to show that the application of the Missouri compromise to State and Territory was insisted upon by the southern members of the Senate in many, very many cases; that we asked nothing, we sought nothing, but the simple recognition of the Missouri compromise line, as carried still further out upon its original principle, and that it was refused us; and that the territorial governments established in 1850 were constructed in utter disregard of the Missouri compromise. If I can succeed in showing that, I shall then contend that it is unreasonable, that it is idle, it is absurd (I use the terms in no offensive sense) for gentlemen to call upon us to maintain a compromise which has been repudiated and disavowed by themselves.

But, before proceeding to examine that legislation, I wish to call the attention of the Senate, for a moment, to what I consider the very small respect that was paid to what is called the Missouri compromise in less than a year after it was enacted. On the 6th of March, 1820, this bill was approved, and under it Missouri was to come into the Union as a State, on an equal footing with the original States. Well, sir, her convention met; they formed a constitution; they sent it here. Nobody disputed that it was a republican constitution, and the Senate passed a bill immediately for the admission of Missouri, or declaring her admitted into the Union upon an equal footing with the original States. It went down to the House. What became of it? It was rejected by the House. Upon what principle was it rejected?

Now, sir, consider for one moment. We are told that in the session of 1819-'20 there was a difficulty about the admission of Missouri, because the representatives of certain portions of the United States wished to dictate to that State the exclusion of slavery; and finally it was agreed that the State should be admitted into the Union with the exercise of her own power and discretion upon that subject, provided that slavery should be excluded from the rest of the territorial domain acquired by the cession from France. That was the bargain. Well, then, does it not follow, beyond all doubt, that, if that bargain was to be carried out, Missouri should have been instantly admitted after the formation of her republican constitution? But this was not done. The bill to admit her was rejected; and rejected why? Because she had introduced into her constitution a provision authorizing or directing her legislature to provide by law to prevent the immigration of free negroes and mulattoes into the State. It was insisted that free negroes and mulattoes were citizens of the United States, and had a right, under the Constitution of the United States, to go into Missouri; and, inasmuch as this prohibition was contrary to the Constitution of the United States, they refused to admit Missouri into the Union.

Well, now, look at this matter. If this provision in the constitution of Missouri was not in violation of the Constitution of the United States, she had the power to make it; and as far as these objecting representatives were concerned, she had a right to make it. If she did not think that free negroes and mulattoes were the best associates for her white or black population, she had a right, by a provision of law, to select the company, color, and description that should be allowed to come within her borders; and therefore, it was an attempt to impose a new condition upon the State, in defiance of the solemn compact whose holiness has been so much invoked and pressed upon us.

Then, on the other hand, suppose these people were citizens of the United States, did not everybody know that if they were citizens of the United States, and had rights under the Constitution of the United States, which were withheld under this prohibition of the Missouri constitution, it was null and absolutely void? It was, therefore, a needless attempt to fasten a new difficulty on this State, and to exclude her from the Union for doing what I believe Illinois, Indiana, and I do not know but other free States of the Union, have felt themselves compelled to do in order to preserve the bodies politic, which their public authorities represent, from an insufferable nuisance.

Mr. TOOMBS. Massachusetts had such a law on her statute-book then.

Mr. BADGER. My friend suggests that Massachusetts had a law on her statute-book at that very time, prohibiting their coming in. I do not know how that is; but, then, I suppose it is a very different thing between allowing the free negroes to come into Massachusetts, and turning them over into Missouri; that is, supposing it to be so. Then how was the State got in at last? By a marvellous contrivance, to which I must refer. I really think it is one of the most remarkable pieces of humbuggery that ever was palmed off on any legislative body, composed of people who had attained the age of maturity—I do not say those who had come to the age of twenty-one, but those who had passed fourteen, if any such ever acted as legislators. Here is a joint resolution “providing for the admission of Missouri into the Union on a certain condition.” What was it?

“Resolved, &c. That the State of Missouri shall be admitted into this Union, on an equal footing with the original States, in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the constitution, submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States in this Union shall be excluded from any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States.”

In other words, Missouri was admitted upon the “fundamental condition” that the State should agree that her constitution was not paramount to the Constitution of the United States. That is the whole of it. Then mark the next provision of this resolution:

“Provided, That the legislature of the said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act,” &c.

I have pointed out the folly, the absolute nonsense, but I suppose it was the best that could be done, of requiring as a pre-requisite that the State should declare that the Constitu-

tion of the United States was and should be actually paramount to the constitution of Missouri; and that then this declaration of what the constitution of Missouri should be, should be ascertained—how? Not by a solemn public act of a convention, representing in full sovereignty the people of Missouri, but by a solemn act of the legislature of Missouri under the constitution, repealing, if necessary, this provision of the constitution.

Mr. EVERETT. Did not Mr. Clay draw up that provision?

Mr. BADGER. I do not know. I think I recollect hearing Mr. Clay once on this floor say, in substance, that he laughed in his sleeve at the idea that people were so easily satisfied.

Mr. BUTLER. I heard him say it.

Mr. BADGER. Now, Mr. President, I propose to come to the inquiry whether the principle of the legislation of 1820 has not been in fact departed from, overturned, and repudiated. First, sir, I call your attention to an amendment moved in the Senate to the bill to establish the territorial government of Oregon. By reference to the journal of August 10, 1848, it will be seen:

* On motion by Mr. DOUGLAS to amend the bill, section fourteen, line one, by inserting after the word 'enacted':

"That the line of 36° 30' of north latitude, known as the Missouri compromise line, as defined by the eighth section of an act entitled 'An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain territories,' approved March 6th, 1820, be and the same is hereby declared to extend to the Pacific ocean, and the said eighth section, together with the compromise therein effected, is hereby revived and declared to be in full force and binding for the future organization of the Territories of the United States, in the same sense, and with the same understanding with which it was originally adopted."

In August, 1848, the honorable senator from Illinois asked the Senate to recognise and apply the principle, the postulate, the fundamental truth, the assumed position upon which the resolution of 1820 was based, and to carry it to the Pacific ocean. Well, sir, it was carried in the Senate. I must pause here and say that right things are very apt to be carried in the Senate. The vote was: yeas 33, nays 21. I believe that every gentleman representing a southern constituency here voted for that provision. I find the yeas were:

"Messrs. Atchison, Badger, Bell, Benton, Berrien, Borland, Bright, Butler, Calhoun, Cameron, Davis of Mississippi, Dickinson, Douglas, Downs, Fitzgerald, Foote, Hannegan, Houston, Hunter, Johnson of Maryland, Johnson of Louisiana, Johnson of Georgia, King, Lewis, Mangum, Mason, Metcalf, Pearce, Sebastian, Spruance, Sturgeon, Turney, and Underwood—33."

The nays were:

"Messrs. Allen, Atherton, Baldwin, Bradbury, Breese, Clarke, Corwin, Davis of Massachusetts, Dayton, Dix, Dodge, Felch, Greene, Hale, Hamlin, Miller, Niles, Phelps, Upham, Walker, and Webster—21."

The bill went down to the House with that amendment. The House refused to concur in the amendment. You and I both know, sir, the long night of pain and suffering we passed here for the purpose of considering the question whether that amendment should be insisted upon or receded from by the Senate. I know well that I sat up here one whole night, knowing that the majority of the Senate were resolved to recede, and solely for the purpose—though I would have lost a thousand Oregon bills myself, rather than have receded—of maintaining what I thought the rights of the majority of this body, in determining what should be done with regard to this amendment, when it was said there was an understanding among some gentlemen to continue the discussion till there could be no decision, on account of the expiration of the session. I want to show the vote upon receding. "On the question to recede from the third amendment of the Senate," which I have stated, "it was determined in the affirmative—yeas 29, nays 25."

The yeas were:

"Messrs. Allen, Baldwin, Benton, Bradbury, Breese, Bright, Cameron, Clarke, Corwin, Davis of Massachusetts, Dayton, Dickinson, Dix, Dodge, Douglas, Felch, Fitzgerald, Greene, Hale, Hamlin, Hannegan, Houston, Miller, Niles, Phelps, Spruance, Upham, Walker, and Webster—29."

The nays were:

"Messrs. Atchison, Badger, Bell, Berrien, Borland, Butler, Calhoun, Davis of Mississippi, Downs, Foote, Hunter, Johnson of Maryland, Johnson of Louisiana, Johnson of Georgia, Lewis, Mangum, Mason, Metcalf, Pearce, Rusk, Sebastian, Turney, Underwood, Westcott, and Yulee—25."

We, of the south, were all united, originally, and, I believe, but with two exceptions, on the question of receding. We voted together. We preferred losing the bill to losing what? This very Missouri compromise line. So stood the case in 1848.

Now, sir, in 1850, we have manifold evidences that southern gentlemen upon this floor desired nothing in the world but the Missouri compromise line. Some southern gentlemen thought the line was a constitutional exercise of power; others thought it was not; but so anxious were they that this whole matter should be closed up, and future agitation avoided, that, without reference to any difference of opinion upon that subject, all we asked was the carrying out the principle established in 1820, by the continuation of the line through the newly-acquired Territories.

Now I must trouble the Senate by calling attention to one or two of these cases in 1850, not so much on account of the Senate,

because we all remember it; but the country ought to know where we stood then, and why we stand where we are now. When we had before us the bill for the admission of the State of California, an amendment was moved by Mr. King, to which I wish to refer. This is a reference to which my friend from Connecticut alluded the other day; it will serve to illustrate what I say of the determined earnestness with which southern gentlemen here insisted upon that very line of 36° 30'. Mr. King, of Alabama, moved an amendment, the effect of which was to make the southern boundary of that State 35° 30'. A motion was made by Mr. Davis, of Mississippi, to amend it by striking out "35" and putting in "36," so as to make it the Missouri compromise line, and it was determined in the negative—yeas 23, nays 32. Those who voted in the affirmative were:

"Messrs. Atchison, Badger, Barnwell, Berrien, Butler, Clemens, Davis of Mississippi, Dawson, Downs, Foote, Houston, Hunter, King, Mangum, Mason, Morton, Pratt, Rusk, Sebastian, Soule, Turney, Underwood, and Yulee—23."

Then, upon Mr. King's original amendment, to make 35° 30' the southern boundary of California, the vote stood: yeas 20, nays 37.

Those who voted in the affirmative are:

"Messrs. Atchison, Barnwell, Berrien, Butler, Clemens, Davis of Mississippi, Dawson, Downs, Foote, Houston, Hunter, King, Mason, Morton, Pratt, Rusk, Sebastian, Soule, Turney, and Yulee."

Among those who voted in the negative was myself. So resolute was I for insisting upon that particular line of 36° 30', the reason for which I will explain in a few minutes, that I voted against Mr. King's amendment.

Mr. BUTLER. Will the gentleman allow me to say a word?

Mr. BADGER. Certainly.

Mr. BUTLER. I find that the amendment of Mr. King, to make 35° 30' the southern boundary of California, has been misunderstood. The reason that most of us voted for that line was because it was on the mountain tops. That was the reason given by Mr. King, and the variation from the Missouri line was not material, and it was thought to be the best boundary. Southern gentlemen were perfectly willing, at that time, to take any boundary which would be adhered to in good faith.

Mr. BADGER. I understand that, and of course I did not think that one degree either way was very important; but I was anxious to adhere to the Missouri compromise line, because it gave a clear legal ground to stand upon; because it was associated with a patriotic settlement of a former difficulty; because it had age on its side, and commanded, consequently, a large share of favor in the public mind, which could not be secured for any new line, however recommended as a boundary by geographical advantages.

Mr. MASON. Will the senator read the negative vote on the amendment of Mr. King?

Mr. BADGER. Yes, sir; those who voted in the negative are:

"Messrs. Badger, Baldwin, Benton, Bradbury, Bright, Cass, Chase, Clarke, Clay, Cooper, Corwin, Davis of Massachusetts, Dayton, Dickinson, Dodge of Wisconsin, Dodge of Iowa, Douglas, Felch, Greene, Hale, Hamlin, Jones, Mangum, Miller, Norris, Pearce, Phelps, Seward, Shields, Smith, Spruance, Sturgeon, Underwood, Upham, Wales, Walker, and Whitcomb."

Again, on the 31st July, the Senate having the compromise bill under consideration, and so much thereof as provided for the admission of California as a State having been stricken out—

"On motion, by Mr. DOUGLAS, to amend the bill, by inserting in section five, line five, after the word 'east,' 'by the summit of the Rocky mountains, and on the south by the thirty eighth parallel of north latitude.'

"A motion was made by Mr. BUTLER that the Senate adjourn; and

"It was determined in the negative.

"The amendment proposed by Mr. DOUGLAS having been modified, on motion by Mr. ATCHISON, by striking out 'thirty-eight,' and inserting 'thirty-six degrees thirty minutes';

"On the question to agree to the amendment proposed by Mr. DOUGLAS, as amended,

"It was determined in the negative—yeas 26, nays 37.

"On motion by Mr. CHASE,

"The yeas and nays being desired by one-fifth of the senators present,

"Those who voted in the affirmative are:

"Messrs. Atchison, Badger, Barnwell, Bell, Berrien, Butler, Clemens, Davis of Mississippi, Dawson, Dickinson, Douglas, Downs, Foote, Houston, Hunter, King, Mason, Morton, Pearce, Pratt, Rusk, Sebastian, Soule, Turney, Underwood, and Yulee."

Again, (for this question was tried in every possible form,) on the California bill, Mr. Foote moved to amend by inserting a provision that the State of California should never claim as within her boundaries any territory south of 36° 30', and it was determined in the negative—yeas 23, nays 33. Twenty-three southern senators voted in favor of this amendment. Then, again, Mr. Turney, of Tennessee, proposed an amendment containing this provision, "that her southern limits shall be restricted to the Missouri compromise line, (36° 30' north latitude,) and it was rejected by a vote of 20 yeas and 30 nays."

Again, on the bill for establishing the boundaries of Texas and a territorial government for New Mexico, a motion was made by Mr. CHASE to amend the bill by inserting section 22, line 9, after the word "residents," "nor shall there be in said territory either slavery or involuntary servitude otherwise than in the punishment of crimes whereof the party shall be duly convicted to have been personally guilty," it was determined in the negative—yeas 20, nays 25.

I will not trouble the Senate with reading these amendments further. One amendment, I recollect, set out with great particularity that the Missouri compromise line should be extended to the Pacific, and declared to be in full force, and binding in the same sense, and with the same understanding with which it was originally adopted.

Now, sir, what was the result of all these various votes? Here was the Territory of New Mexico, all of which, except a very small fraction, not worth mentioning, lay south of $36^{\circ} 30'$, and yet the senator who now invokes us to support the Missouri compromise, [Mr. CHASE,] moved to apply the Wilmot proviso to that Territory, and voted, in every instance, upon the yeas and nays, except in one case, where his name does not appear at all, against the recognition or the application of the Missouri compromise in any form whatever. What, then, is the actual result? Here were those of us who were on the floor representing southern constituencies, not only arguing, but I may almost say begging, for the recognition of the Missouri compromise line. We could not obtain it. The Missouri compromise line was rejected; it was repudiated; it was, in effect, declared not to be applicable to those territories, and that the principle of it should not extend to them. What, under these circumstances, did Congress do? They passed two bills for territorial governments; one for Utah, lying north of $36^{\circ} 30'$, and one for New Mexico, nearly all of which was south of $36^{\circ} 30'$, in precisely the same words in respect to this whole subject-matter, putting them exactly upon the same footing, and conferring upon each of them the same amount of legislative power, and treating the line of $36^{\circ} 30'$ as if it had politically no existence.

Now, Mr. President, to recur, for a moment, to what I set out upon this point with mentioning—that the principle upon which an enactment is founded, the principle out of which a rule of conduct grows, is some original or assumed truth; some proposition admitted to be right, out of which the law, or rule of conduct, naturally and properly springs—I beg your attention to the language which has been so much objected to and criticised. It is that the Missouri restriction limiting slavery according to latitude “is inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories recognised by the legislation of 1850.” “The principle of non-intervention,” not the words contained in those laws. Now we ascertain what was the principle upon which that legislation proceeded, by looking both to what was put into the laws, and to what Congress refused to put into them; and, examining the subject in that light, we find that the legislation of 1850 was founded upon a distinct repudiation of the idea of making any difference between the condition

of a people lying on one side of a line of latitude, and the condition of a people lying on the other side; and that was accomplished against the speeches and votes of the whole southern delegation upon this floor.

Now, sir, if I am right, these things are made out: The principle or fundamental truth upon which the legislation of 1820 was founded was, that Congress had power, and that Congress ought to intervene to exercise that power, to exclude slavery from Territories lying north of a certain latitude, and impliedly admitting it on the other side. That principle was applied to all the territory which the United States had which could be made subject to it. It was recognised as a principle by its subsequent application upon the acquisition of Texas, when it was continued out in its course towards the Pacific ocean; yet Texas did not fall within the description contained within the Missouri compromise. She was a foreign independent State, incorporated by her free consent, upon the principle of a treaty. Then, in 1850, what had been thus recognised was distinctly and unequivocally repudiated. The principle upon which the legislation of 1820 was founded, being thus disregarded, is it not strictly proper to say that the principle that Congress should not intervene in relation to these matters distinctly shown eviscerated out of the acts of legislation of 1850, being directly inconsistent with the other principle on which the legislation of 1820 was founded, the latter is inoperative and void? I pray you, sir, if it is not strictly accurate to say that this clause of the act of 1820 is inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories; and that that principle was recognised by the legislation of 1850?

Well, if it was, as to my understanding it is evident it was, I say that the honorable chairman could not have adopted operative words more strictly accurate and proper than those with which he has followed this recital. What are they? “Is hereby declared inoperative and void.” It would not have been correct or just to the subject to say that we “hereby repeal” the Missouri compromise, as if we had taken a new notion now, suddenly, in regard to it; but it is the true, proper, and legitimate conclusion, that, Congress having in 1850 adopted a principle, and grounded its legislative action upon it, which is inconsistent with the principle involved in the eighth section of the Missouri law, that eighth section should be declared inoperative and void. In the court below that provision effects a repeal; and it is just as legitimate a mode of effecting a repeal of a law, to declare it void, as to say it is “hereby repealed.” If gentlemen will consult the English statute-book, they will find numerous instances of repeals by such words. It is peculiarly appropriate to adopt that form in this case, because it is a legal consequence fol-

lowing out of the facts recited, that it ought to be "inoperative and void," and it is therefore declared to be so."

Mr. President, in the view which I take of this subject, it seems to me strange—no, I will not say strange—but I ask you if it is not very remarkable, whether strange or not, that the honorable senator from Ohio [Mr. CHASE] should have felt such an extreme urgency for proper respect being paid to the Missouri compromise line, when, in every instance in which it was proposed to the consideration of the Senate in the year 1850, he constantly, by his vote, refused to recognise it? He calls upon us to "respect the Missouri compromise, regard plighted faith, submit to the exclusion of your slaves in territory lying north of 36° 30', and in consideration thereof I will also exclude your slaves from territory south of 36° 30'." "I beg you," says he, "not to disregard the terms of this compromise. You are men of honor; you have agreed to give up the right of carrying your slaves north of 36° 30', and we impliedly agreed that you might carry them into territory south of 36° 30'; I beg you to adhere to your surrender north of 36° 30'." And, as the most persuasive argument to induce us to do so, he says: "I feel bound, by my love of freedom and regard for the Constitution, to refuse to let you carry them into territory south of 36° 30', that being the equivalent upon which you made the other surrender."

This is a strange mode of enforcing the observance of compacts; and it shows with what facility we perceive the propriety of obliging others, and how easily we perceive it is not easy to oblige ourselves by the obligation of a compact, when the question returns whether we shall give the consideration for which the other party contracted. I remember having seen somewhere that Dr. Porteus, who was at one time the Bishop of London, and a man of no small celebrity in his day, had written a poem upon the horrors and miseries of war, in which he had given so vivid a picture of the dreadful consequences and accompaniments of war, and its utter irreconcilability with the principles of Christianity, that everybody who read the poem was deeply struck with the fervid eloquence and impassioned piety of the right reverend author. It is said that some time afterwards, during the prosecution of a foreign war, he made a strong speech in the British Parliament in favor of the war, and in support of the ministry who were carrying it on. As he was leaving the house, some noble lord fell alongside of him, and said: "After reading your lordship's very animated and stirring picture of the horrors of war, I was a little surprised to hear your lordship's speech to-day, comparing it to what you have said in your poem." "Oh," said he, "my lord, my poem was not written for **THIS** war." [Laughter.] It

seems to me that this is just exactly the same answer which the honorable senator from Ohio gives to us. He says: "Observe your plighted faith; hold yourselves bound by the bargain; adhere to the Missouri compromise." We ask him, in reply: "Will you adhere to it?" "Oh," he answers, "my position, my argument, my urgency, were not intended for this side of the case, but for the other."

Sir, I have now shown that, from the time I have had a seat in Congress, in common with my southern friends generally, I have endeavored to obtain a recognition and perpetuation of the principles which were involved in the compromise of 1820. We have signally failed. Whether we thought the rule laid down was just or unjust, favorable or unfavorable, however much or however little we thought it might have entrenched on what we might have considered liberal or fair in our northern brethren, we asked for nothing but the bargain fairly carried out, and we were at all times ready to be content with it. Now, after it has been utterly repudiated, after a totally different system of legislation has been adopted, in defiance of our votes and our remonstrances, I think it is a little unreasonable, and a little absurd, that gentlemen should call upon us to respect a compromise which they themselves have destroyed—destroyed just as effectually, though not as directly, as if they had applied their opposition to the specific case to which the Missouri compromise line was applied. They have destroyed the principle on which the legislation was based, as demonstrated by the circumstances of the time, and the subsequent recognition in the annexation of Texas. They have refused to carry out the contract in its spirit and fair meaning. They seek to maintain whatever of it is beneficial to themselves, and to disregard all the residue.

Mr. President, believing, as I do, that the proposition contained in the words of the amendment which has been incorporated into the bill is true, that the form of legislation is appropriate, what is there that calls upon me to vote against it, or against a bill containing it? I have shown, I think, that there is no principle of plighted faith that in the least binds us. The legislation now proposed is, in my judgment, right. It is what I have always desired, if it could have been freely obtained.

My position, as you, Mr. President, are aware, has never been an extreme one upon this subject. I was always content with the Missouri compromise line; always anxious for it; always voted for it; but my own individual opinion upon the subject always was that the principles adopted in 1850 are the true principles. What are they? They are announced in the amendment which has been adopted.

We have among us a population of three millions of slaves. Nothing is more idle than for gentleman to trouble themselves with an

investigation into the propriety of those slaves being here, into the rectitude and lawfulness of keeping them in the condition of slavery, or into the misfortune or calamity which may result from retaining them in slavery. We are dealing with a fact. They are here. They are slaves. They cannot remain here except as slaves. Everybody knows that. They cannot, by any operation of man's wit, be put into any situation in our country which will not be vastly more injurious to them, physically and morally, than the identical state and condition which they now occupy. They cannot be sent away. Where are your means to come from to make an exodus across the ocean of three millions of slaves—to buy them, and to remove them? And if you could buy them, and remove them, permit me to say that a more cruel act of tyranny and oppression could not be perpetrated upon any body of men. A very large proportion of them would reject with horror the idea of being transported to those barbarous and foreign climes of Africa, for which, though their fathers came from them, they cherish no feeling of attachment; for this is their country, as well as ours. You cannot remove them; they are obliged to remain here, and they are obliged to be slaves. That is clear.

Now, sir, can anything be more evident than that the true course, for people situated in this way, is not to aggravate the incidental evils of such a condition by exasperating inquiries, charges, and counter-charges? The people of every portion of the United States should meet this question as involving a common interest, and, so far as there is calamity, a common calamity.

What, then, are you going to do? Is it not obvious that the true policy, as well as the true christian philanthropy involved in this matter, is to allow this population to diffuse itself in such portions of the Territories as from climate and soil are adapted to slave cultivation? You can have no injurious competition with your free labor. Slave labor will not be profitable, and largely employed anywhere, except upon the grand staples of the south—tobacco, cotton, sugar, and rice. Will white men make these products for exportation? They will not. Will your northern people compete with southern slaves for the privilege of making rice, and sugar, and cotton, and tobacco? No, sir. Where that cultivation ceases, rely upon it, a slave population is not going to spread itself. We shall have no conflict, no embarrassment from the meeting of two tides of laborers from the north and south; for the kind of soil and climate which suits us and our slave cultivation does not suit yours. Who is injured by it? Not the slave. Nothing is more beneficial for him than to allow the population of which he forms a portion to spread itself, to give it room. You promote his comfort, you improve his health,

you diminish his hardships. If you surround a population situated like ours with a Chinese wall or barrier beyond which it cannot spread itself, if you compress it, what do you do? Why you expose the master to serious inconvenience and discomfort, and you destroy the whole happiness of the slave. No man proposes to add to this population. There is not a man in the New England States who would more thoroughly and absolutely resist any attempt to bring a slave from Africa to this country than we of the south would.

Here, then, is the great fact we have to deal with. Why not let it adjust itself? Why not pursue the wise policy indicated in the measures of 1850? Cease to quarrel and wrangle with each other. Live in your free States. Rejoice in the possession of the many advantages you have. But if there is a strip of land belonging to the United States, upon which a southern planter can make cotton or sugar, why grudge it to him? He reduces no man from freedom to slavery in order to make it. He transfers his slaves from the banks of the Mississippi, or the Cooper, or the Cape Fear, or any of our southern rivers, to another place; and he certainly will not do it unless the lands are better, the crops larger, and he and his slaves can live more comfortably, and have a more abundant supply of the necessaries of life; and I will ask, in the name of heaven, whom does it hurt? You love freedom. We do not ask you to make freemen slaves. You profess to have a regard for the black man; can you resist the only measure which can enable us to make a progressive improvement of his condition as the amount of black population increases?

It is, therefore, as it seems to me, wise and just to pursue the principles indicated in, and out of which sprang the legislation of 1850. It is unjust to no section of the country. No mortal man can show that it will do an injury to any human being that treads God's earth, whether he be free or slave. The poor slave will be benefited by it. The master, with a large number of slaves, cramped for land in a country perhaps where land is dear, who desires to do a good part by these slaves who have been perhaps transmitted down to him for three generations in the same family, and between whom and himself there are mutual feelings of protection on the one hand, and of affectionate submission and reverence on the other, wants to break up from the place where he is obliged to stint himself or stint his people, and to remove with his little family, like a patriarch, and settle upon better land, where he can live in the fullest enjoyment of the necessaries and comforts of life; and you say, no. Why "no?" You do not want the land yourself; you do not want to grow cotton; you do not want to grow tobacco or rice. Why say that this southern planter shall not grow them with

his slaves? Is it from hatred of the master? Is it because the removal, while it benefits the slave, will benefit the master also? I cannot believe that anybody can cherish a wish to do us injury for the sake of it; yet if it benefits the slave while it benefits the master, and injures nobody else, in the name of common sense, and our common Christianity, what motive can dictate such a policy? It must be the result either of frenzy and fanaticism, or of an angry and embittered feeling against a population who do not wish to injure, and are not conscious of having ever injured you. That we have slaves among us, if it be a fault, God knows it is not our fault. They were brought here in the times of your fathers and of our fathers. Your fathers brought them, and ours became the purchasers; if you say in an evil hour, be it so; but what are we to do? Here is this burden. Assume it to be as great as you please; the greater it is, the more powerful is my argument. Here is this burden upon us, not by any fault of our own; we have inherited it; it has been transmitted to us; it was created here by the joint action of your forefathers and ours, and, in the name of God, will you step forward and put heavier weights on this very burden thus innocently inherited by us?

I think, Mr. President, it is in the highest degree probable that, with regard to these Territories of Nebraska and Kansas, there will never be any slaves in them. I have no more idea of seeing a slave population in either of them than I have in seeing it in Massachusetts; not a whit. It is possible some gentleman may go there and take a few domestic servants with them; and I would say that if those domestic servants were faithful and good ones, and the masters did not take them with them, the masters would deserve the reprobation of all good men. What would you have them do? Would you have me to take the servants who wait upon me, and live with me, and to whom I have as strong attachments as to any human beings on this earth out of my own immediate relatives and connexions, and because I want to move to Kansas, put them in the slave market and sell them? Sir, I would suffer my right arm to be cut off before I would do it. Why, therefore, if some southern gentleman wishes to take the nurse that takes charge of his little baby, or the old woman that nursed him in childhood, and whom he called "mammy" until he returned from college, and perhaps afterwards, too, and whom he wishes to take with him in her old age, when he is moving into one of these new Territories for the betterment of the fortunes of his whole family, why, in the name of God, should anybody prevent it? Do you wish to force us to become hard-hearted slave-dealers? Do you wish to aggravate the evils, if there are evils existing in this relation? Do you wish that we shall no longer have a mutual

feudal feeling between our dependants and ourselves? Do you want to make us mercenary and hard-hearted? Or will you allow us, having, as I trust we have, some touch of humanity, and some of the beneficial and love-breathing spirit of christianity, to let these beings go forth as they are accustomed to do, and us to rejoice when we look out and see our slaves happy and cheerful around us, when we hear the song arising from their dwellings at night, or see them dressed in their neat clothes and going to attend their churches on Sunday, and realizing, as they look at us, that we are the best friends they have upon earth?

Mr. President, perhaps I manifest too much feeling about this matter. It seems to me so clear that no interest or advantage of humanity can possibly be promoted by the spirit which dictates this incessant opposition to every measure which will allow us to improve our own condition and that of our slaves together—it is so impossible to perceive that any good can arise from it—that I cannot speak of it without excitement. I have no bitterness about it. God knows I have none. I blame not those at a distance from us who take up false and mistaken impressions respecting us. I know that efforts, the most wicked and persevering, have been made to produce these impressions, and to present us to the minds of our northern fellow-citizens as monsters of cruelty and oppression. I blame them not. They have been trained to entertain these sentiments and feelings. They are unfortunate in having such false estimates placed in their bosoms respecting their friends and fellow-citizens, descendants of a common revolutionary ancestry. I would to God that I could obliterate those feelings. I would to God that they would be disposed to enfold me and mine, as I am the whole of my northern brethren, if they would permit it, in the arms of a fraternal and perpetual concord. Sir, there can be no difficulty about this matter, if we suffer ourselves to be influenced by those considerations which spring necessarily and naturally out of the facts of the case, and realize that, after all, no abolition movement ever yet accomplished good for a slave. The whole movements of the abolitionists of the north, as all my southern friends around me know, so far as they have had any influence with us, have tended to restrict rather than to relax the bondage under which these people live. They have, in a great measure, stricken from the capacity to be useful in various directions towards them those philanthropic and honorable people who should lead, and otherwise would lead, our society upon these topics. They expose every one to suspicion. They have a tendency to close up the avenue to the otherwise opening and expanding heart. They do no good to the slave. They do no good to the abolitionist. They are but a fruitful source of evils among them and

evils among us, without one single compensating advantage on earth, present or future.

Oh! Mr. President, if we could only agree to take up this subject as a matter of fact, and agree to deal with it in the best way we can, believe me, sir, the day will come, as indicated by my friend from Massachusetts, [Mr. EVERETT,] when the ways of Providence, in permitting this large exodus of the natives of Africa to this country, will be vindicated to man. Why, sir, the light is already dawning upon us in which we can begin to see how ultimate and incalculable a good is to be wrought out of the temporary absence of this population from their native land. The successful commencement of the colonization scheme shows us how the emancipated slaves may carry back to the native Africa of their forefathers the civilization, the Christianity, and the freedom which they never had enjoyed, and, so far as we can see, but for this instrumentality, never could enjoy in their own country. Slaves! The veriest slaves on earth are the native Africans in their own country. The freest of them is not as free as the hardest bonded slave in southern lands. They have ever been so, the property of their princes; as an English traveller says, having nothing as their own, except their skins. In the course of Providence, they were permitted to be brought here. They have been, and their descendants are, a great deal better off than they were in Africa; and if we can only be content to struggle on with the difficulties of our position, in faith and patience doing our own duty, under the present circumstances in which we stand, attempting no wild schemes by which folly may be misled, and by which wrong and misery may be produced, but pursuing that

steady course in which God himself, in all his ministrations, brings about by gradual means and operations the great beneficial results of his creation, we may be assured that ultimately all this will work out great and lasting good.

Mr. President, I desire to say that, though I hold none of my southern friends on this floor responsible for the course of argument which I have offered, or any of the intermediate views I have expressed, I think it right to say, and I think I have their authority to say, that, with regard to the results to which I have come upon this measure, we all agree as one man—every southern whig senator. I wish that to be understood, that the position of gentlemen may not be mistaken because they have not yet had the opportunity of speaking or voting upon this bill.

I think, then, that the great mistake in the argument of my honorable friend from Massachusetts was in not discriminating between the principle and the enactment; between the doctrine out of which the enactment sprung and the enactment which sprung from it; and that, if he will take that into view, he will see, I think—I know he has never any other desire than to see whatever is true and right—that the amendment which has been incorporated into the bill speaks the truth, and is germane and proper in its operative language to the matters recited; and that, if his mind is relieved in regard to the provisions for securing the national faith towards the Indians, he ought to have no difficulty in voting for the bill.

Mr. President, I am very sorry that I have in such a desultory manner trespassed so long upon the attention of the Senate, and having said that, I shall leave this subject.